

1 Zachary L. Ayers
2 Ayers Law Firm, P.L.L.C.
3 1312 N. Monroe Street, Suite 133
4 Spokane, WA 99201
Telephone: (509) 252-6005
Email: zach@ayerslawfirm.net

United States District Court
Eastern District of Washington
(Hon. Rosanna Malouf Peterson)

2:19-CR-00186-RMP

Sentencing Memorandum and Motion for Downward Variance

I. Introduction

17 Matthew Paul Porter, through counsel, Zachary L. Ayers, submits the following
18 sentencing memorandum and motion for downward variance. Mr. Porter respectfully
19 requests the Court to sentence him to 36-months imprisonment, a 4-year term of
20 supervised release, no fine, and a \$200 mandatory special penalty assessment.
21

II. 18 U.S.C. 3553(a)

24 18 U.S.C. §3553 sets out factors that are helpful to the Court when determining
25 what sentence is “sufficient but not greater than necessary” to comply with the
26 purposes of the statute. The District Court may not presume that the guideline range is
27 reasonable, nor should the guideline factors be given any more or less weight than any
28

1 other. *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) *en banc*, citing *Rita v. United*

2 States, 127 S.Ct. 2456 (2007), *Gall v. United States*, 127 S.Ct. 2833 (2007), and *Kimbrough*

3 *v. United States*, 128 S.Ct. 558 (2007). The guidelines are only one factor to be taken

4 into account in arriving at an appropriate sentence. *Id.*

5 **Nature of the Offense**

6 This offense is serious. Mr. Porter understands that the offense he committed

7 affects the public at large. Controlled substances poison the community

8 psychologically, physically, and financially. Although he collected firearms, he

9 understands that those firearms are illegal in nature. Each of these issues harmed the

10 physical as well as emotional well-being of his family and fiancé.

11 **The History and Characteristics of the Defendant**

12 Mr. Porter's life is one of significant sadness and uplifting life events. Mr. Porter

13 has lived in Eastern Washington most of his life. He has never met his father (PSIR

14 ¶97-98).

15 He dated Ashley Robinson, the mother of Mr. Porter's oldest son in the mid-

16 2000's. (PSIR ¶111). She died of a blood clot in her brain in 2007. (PSIR ¶111). Her

17 passing sunk Mr. Porter into a place of despair that affects him to this day. His right

18 leg has a tattoo with Ms. Robinson's initials and birth date.

19 This case is Mr. Porter's first and, hopefully, only conviction. His time at pretrial

20 intensive inpatient treatment opened his eyes to how he was harming himself and his

21 fiancé. That experience affected him so much that he helped get his fiancé clean and

22

23

24

1 sober for the birth of their child.

2 **To Promote Respect for the Law**

3 A sentence of 36 months promotes respect for the law. By the time of
4 sentencing, Mr. Porter will have been incarcerated for almost one year.

5 Intensive inpatient treatment taught Mr. Porter the damaging effects of his drug
6 addiction. It taught him how it was hurting others and almost led him to overdosing.
7 It hurt his family, his fiancé, and his children.

8 **To Afford Adequate Deterrence to Criminal Conduct**

9 A sentence of 36 months will deter criminal conduct. The anticipated
10 supervised release conditions will help to deter future criminal conduct.

11 “Generally, a lesser period of imprisonment is required to deter a defendant not
12 previously subject to lengthy incarceration than is necessary to deter a defendant who
13 has already served serious time yet continues to offend.” *United States v. Quails*, 373
14 F.Supp.1d 873 (E.D. Wis. 2005). “If a defendant served no time or only a few months
15 for prior offenses, a sentence of even 3 or 5 years for the current offenses might be
16 expected to have the requisite deterrent effect.” *United States v. Mishoe*, 241 F.3d 214
17 (2nd Cir. 2001).

18 Mr. Porter’s is in criminal history Category 1. He has never served a prison
19 sentence before. A sentence of more than 36 months would have the opposite effect
20 considering he is now sober. Inpatient treatment has changed Mr. Porter’s entire view
21 of controlled substances and the harm it caused him and his family.
22

1 **Protection of the Public**

2 A sentence of 36 months with 4 years of supervised release will satisfy this
3 factor as well. Mr. Porter agrees with and intends to follow the standard and special
4 conditions of release recommended in the PSIR. It is his goal to maintain sobriety for
5 the rest of his life.

6 **III. Motion for Downward Variance**

7 Mr. Porter seeks a downward variance from the 87-108 months range of
8 imprisonment to 36 months. His fiancé has endured substance addiction. She saw the
9 positive changes that Mr. Porter has taken and mirrors those same changes to be clean
10 and sober.

11 With a mental health evaluation and potential treatment, Mr. Porter will be able
12 to correct many of the challenges he faces mentally, physically, and emotionally.
13 Having a newborn to take care of and reestablishing his relationship with his oldest
14 son are his motivations to maintain sobriety and not commit further crimes.

15 Additionally, the guideline range in the pre-sentence report overstates the
16 potential sentence. “Additionally, prior to this offense, Mr. Porter had never been
17 incarcerated; therefore, a sentence less than the low end of the guideline range may be
18 sufficient to deter further criminal conduct, promote respect for the law, while
19 reflecting on the seriousness of the offense.” (PSIR ¶179). Mr. Porter’s lack of criminal
20 history before this case is telling for someone who is 40-years old. It is unlikely that he
21 will reoffend in the future.

1 Additionally, Mr. Porter has strong family ties. His mother and siblings live in
2 the Eastern District of Washington and are quite supportive of him and his path to
3 recovery.
4

5 **IV. Conclusion**

6 The Court should impose a sentence “sufficient but not greater than necessary.”
7
8 Mr. Porter respectfully requests the Court to sentence him to 36 months
9 imprisonment, with credit for time already served, a term of 4-years of supervised
10 release, no fine, and a \$200 special mandatory penalty assessment. Mr. Porter
11 respectfully requests the Court to recommend FDC Seatac for placement.
12

13 Dated this 10th day of May 2021.

14 Respectfully Submitted,

15 *s/Zachary L. Ayers* _____
16 WSBA # 46496
17 Attorney for Matthew Porter
18 Ayers Law Firm, P.L.L.C.
19 1312 N. Monroe Street, Suite 133
20 Spokane, WA 99201
Telephone: (509) 252-6005
Email: zach@ayerslawfirm.net

Service Certificate

I hereby certify that on May 10, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Assistant United States Attorney Richard Barker.

s/ Zachary L. Ayers
WSBA # 46496
Attorney for Matthew Porter
Ayers Law Firm, P.L.L.C.
1312 N. Monroe Street, Suite 133
Spokane, WA 99201
Telephone: (509) 252-6005
Email: zach@ayerslawfirm.net